

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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 Inventor ..... Daniel E. Ford  
 Assignee ..... Hewlett-Packard Development Company, L.P.  
 Group Art Unit ..... 2454  
 Examiner ..... Jeong S. Park  
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 Title: Device Driver Selection

REPLY BRIEF

To: Mail Stop Appeal Brief-Patents  
 Commissioner of Patents  
 P.O. Box 1450  
 Alexandria VA 22313-1450

From: James D. Shaurette (Tel. 509-624-4276; Fax 509-838-3424)  
 Wells, St. John, P.S.  
 601 W. First Avenue, Suite 1300  
 Spokane, WA 99201-3817

Appellant respectfully asserts that the rejections set forth in the Office Action dated June 10, 2008 (hereinafter "Office Action") are deficient for the reasons set forth in the Brief of Appellant (hereinafter "Brief") and the reasons herein. Appellant respectfully requests reversal of the rejections of the claims.

**Argument A – The subject matter of claims 30-32 is not directed to non-statutory subject matter**

Dependent claims 30-32 depend from claim 29 which recites statutory subject matter. Appellant respectfully submits that dependent claims 30-32 include all of the limitations of claim 29. Accordingly, Appellant respectfully submits that

claims 30-32 recite statutory subject matter since claim 29 recites statutory subject matter.

Nevertheless, Appellant will amend the preambles of each of dependent claims 30-32 to recite the computer readable storage medium as recited in claim 29 if determined to be necessary as a result of the appeal.

**Argument B – Moore fails to teach or suggest the limitations of claims 1-7, 9-11, 13, 14, 16-24, 28-30, and 33-37.**

Appellants respectfully submit that positively-recited limitations of the claims are not disclosed nor suggested by the prior art and the claims are allowable for at least this reason. Independent claims 1, 16 and 29 recite limitations of calling a routine in a particular driver from a selected set of drivers which executes to determine whether the particular driver is most appropriate to perform the particular device function for a particular device. Referring to page 13 of the Examiner's Answer, the Office states that NEWDEV 210 (a software library per paragraph 0026 of U.S. Patent Publication No. 2004/0003135 to Moore (hereinafter "Moore")) calls the application programming interface API SETUP 220 to initiate the installation of a driver. Per paragraph 0026 of Moore, SETUP builds a list of potential drivers and per paragraph 0035 SETUP assigns a rank to each possible driver and selects the best driver for the device.

*There is no teaching in Moore that either of NEWDEV or SETUP is a device driver or a routine in a driver.* To the contrary, Fig. 2 of Moore explicitly teaches that the NEWDEV DLL (dynamic-linked library) 210 and SETUP API (application programming interface) 220 comprises different components and are external of the drivers 240, 250, 255, 260.

In addition, paragraph 0026 of Moore provides that NEWDEV is a library which initiates the installation of a driver and the SETUP API builds a list of drivers and selects a driver with no teaching that either the NEWDEV library or the SETUP API are routines in a particular driver which are called as recited in the claims.

Referring to paragraph 0035 of Moore, the SETUP API assigns a rank to each possible driver and selects the best driver. The rank indicates how well the driver matches the device and the best matching driver is selected, and if two drivers

have the same rank, then the SETUP API selects the version of the driver with the most recent date. These teachings are void of any disclosure that a routine in a particular driver is called to evaluate the respective particular driver.

Moore fails to include any teachings that the SETUP API calls any routines in the drivers and Moore is void of any teaching or suggestion regarding calling a *routine in a particular driver* let alone the specifically claimed limitations of calling a *routine in a particular driver which executes to determine whether the particular driver is most appropriate to perform the particular device function for a particular device.*

The Office relies upon inherency in support of the rejection as set forth on page 13 of the Examiner's Answer. The Office states that it is inherent in Moore that the technique used to rank the drivers inherently includes a routine for each possible driver in the list in order to decide the appropriate rank. Appellants respond as clearly disclosed in paragraph 0035 of Moore, the SETUP API is used to rank the possible drivers. Moore is void of any teachings that the SETUP API calls a routine in a particular driver which executes to determine whether the particular driver is most appropriate to perform the particular device function for the particular device as recited in claims 1, 16 and 29. Furthermore, Moore is void of any teachings that any of the drivers to be ranked include routines which execute in the manner recited in claims 1, 16 and 29.

Additionally referring to inherency, the Office must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied prior art. *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). MPEP 2112 IV (8<sup>th</sup> ed., rev. 7).

The claimed limitations of calling a routine in a particular driver which executes to determine whether the particular driver is appropriate do not necessarily flow from the teachings of Moore and the reliance upon inherency is improper. As discussed in paragraph 0034 of Moore, the SETUP API searches a user specified location to find drivers and device driver information of a driver is added to the list if an INF file is found to match. As explicitly set forth in paragraphs 0034 and 0035 of Moore, a device ID may be used to identify possible drivers in a directory for the device and the most recent date of a driver may be used to select a driver.

Accordingly, Moore in paragraphs 0034, 0035 teaches an *explicit methodology for selecting a driver without calling a routine in any of the possible drivers which may be selected*. The Office has failed to provide any reasoning why the above-recited claimed limitations necessarily flow from the teachings of Moore, but to the contrary, Moore discloses an entirely different arrangement for selecting an appropriate device driver without calling any routines in any of the possible drivers to evaluate the applicability of the respective drivers to perform functions for the particular device. Accordingly, Applicants respectfully submit that alternative methods for selecting drivers exist apart from the claims and the claimed limitations of calling the routine in a particular driver which executes to evaluate the particular driver do not necessarily flow from the teachings of Moore as evidenced by the existence of the alternative arrangements for selecting a driver including use of device ID and driver dates. Appellants respectfully submit that the reliance upon inherency is improper in consideration of the above-recited authority and the existence of alternatives apart from Appellant's claims.

Referring again to page 13 of the Examiner's Answer, the Office concludes at the second full paragraph that Moore teaches calling a routine in a particular driver with reference to the teachings in paragraph 0035 of Moore. However, paragraph 0035 is void of any teachings that the possible drivers include routines which are called to determine whether the respective drivers are appropriate, and to the contrary, merely discloses that the SETUP API evaluates the drivers based upon matching the device ID and date information of the drivers as explicitly taught in paragraphs 0034 and 0035 of Moore and void of any reference to calling routines in the possible drivers themselves.

Appellants respectfully submit that positively-recited limitations of claims 1, 16 and 29 discussed above are not disclosed nor suggested by Moore. Furthermore, the limitations are not inherent from the teachings of Moore since alternative methods to select drivers apart from calling a routine in the driver itself as recited in the claims exist.

Appellants respectfully request reversal of the 102 rejections of independent claims 1, 16 and 29 for at least the above-mentioned reasons and the reasons set forth in the Brief.

Independent claim 9 recites selection of a particular driver from a selected set of drivers and the particular driver having program instructions stored in memory and executable on the processor to perform analysis to determine whether the particular driver is appropriate to perform a particular device function.

Paragraphs 0034 and 0035 of Moore teach the SETUP API 220 (external of the drivers) using device IDs to find a list of possible drivers and using date information of the drivers to select a specific driver for a device and there is no teaching of the possible drivers of the list having program instructions to perform the claimed analysis to determine whether the particular driver is appropriate. Furthermore, Moore discloses an arrangement for searching and selecting drivers without the drivers having program instructions executable on the processor to perform the claimed analysis.

Appellants respectfully submit that positively-recited limitations of claim 9 discussed above are not disclosed nor suggested by Moore.

Furthermore, the limitations are not inherent from the teachings of Moore since the claimed limitations do not necessarily flow from Moore. In particular, Moore discloses an alternative arrangement for selecting drivers without the particular driver which is selected having the claimed program instructions executable on the processor to perform the claimed analysis.

Appellants respectfully request reversal of the 102 rejections of independent claim 9 for at least the above-mentioned reasons and the reasons set forth in the Brief.

Independent claim 24 recites selecting a particular driver from the selected set of drivers, and performing analysis within the particular driver to determine whether the particular driver is appropriate to perform a particular device function.

As discussed above, paragraphs 0034 and 0035 of Moore teach the SETUP API 220 using device IDs to find a list of possible drivers and using date information of the drivers to select a specific driver for a device. However, Moore fails to teach or suggest performing analysis within a particular driver to determine whether the particular driver is appropriate to perform a particular device function in combination with selecting the particular driver from a selected set of drivers. Appellants respectfully submit the above-recited limitations of claim 24 are not disclosed nor suggested by the teachings of Moore.

Furthermore, Moore teaches *use of device IDs and driver dates* to select a driver for a device without performing any analysis within the particular driver. Accordingly, Moore teaches an alternative arrangement for selecting a driver and the claimed limitations do not necessarily flow from Moore. This alternative arrangement for selecting a driver is different than the claimed limitations illustrating that other alternatives exist and the specifically claimed limitations are not inherent from the teachings of Moore.

Appellants respectfully request reversal of the 102 rejections of independent claim 24 for at least the above-mentioned reasons and the reasons set forth in the Brief.

Independent claim 33 recites *means for automatically selecting, from among a number of drivers, a particular driver having features which most closely correlates to a set of device features of a device, where a routine is called in the particular driver which executes to determine a correlation of the particular driver to the set of device features of the device*.

Moore explicitly discloses at paragraphs 0034 and 0035 that the SETUP API 220 uses device IDs to find a list of possible drivers and uses date information of the drivers to select a specific driver for a device. Moore fails to disclose teachings regarding routines in the drivers themselves and fails to teach or suggest that a routine in a particular driver which is selected is called to perform any function let alone the claimed limitations that the *routine is called in the particular driver (which was selected) to determine a correlation of the particular driver to the set of device features of the device* as explicitly claimed. Appellants respectfully submit the above-recited limitations of claim 33 are not disclosed nor suggested by the teachings of Moore.

Furthermore, Moore teaches *use of device IDs and driver dates* to select a driver for a device *without teachings regarding a routine in a particular driver which was selected to determine the claimed correlation*. Accordingly, Moore teaches an alternative arrangement for selecting a driver apart from the claim limitations, and the claimed limitations do not necessarily flow from Moore. This alternative arrangement for selecting a driver is different than the claimed limitations illustrating that other alternatives exist and the specifically claimed limitations do not necessarily flow and are not inherent from the teachings of Moore.

Appellants respectfully request reversal of the 102 rejections of independent claim 33 for at least the above-mentioned reasons and the reasons set forth in the Brief.

**Argument C – Moore fails to teach or suggest the limitations of claims 15, 25 and 27.**

As noted in the Brief, claim 15 depends from independent claim 9 and claims 25 and 27 depend from independent claim 24 of the present application. Appellants respectfully submit that positively-recited limitations of independent claims 9 and 24 are not disclosed nor suggested by Moore for the reasons above and as set forth in the Brief. As set forth in Brief at page 24, the deficiencies of the Moore reference with regard to independent claims 9 and 24 are not cured by the rejection of claims 15, 25 and 27.

Appellants respectfully request reversal of the 103 rejection of claims 15, 25 and 27 over Moore for the above-mentioned reasons and the reasons set forth in the Brief.

**Argument D – Moore and Philyaw fail to teach or suggest the limitations of claims 12, 26, 31 and 32.**

As noted in the Brief, claim 12 depends from independent claim 9, claim 26 depends from independent claim 24, and claims 31 and 32 depend from independent claim 29 of the present application. Appellants respectfully submit that positively-recited limitations of independent claims 9, 24 and 29 are not disclosed nor suggested by Moore for the reasons above and as set forth in the Brief. As set forth in Brief at page 25, the deficiencies of the Moore reference with regard to independent claims 9, 24 and 29 are not cured by the teachings of U.S. Patent No. 6,704,864 to Philyaw. Accordingly, Appellants respectfully submit that positively-recited limitations of the claims are not disclosed nor suggested by the teachings of Moore and Philyaw taken alone or in combination and the 103 rejection of the claims is improper.


Appellants respectfully request reversal of the 103 rejection of claims 12, 26, 31 and 32 over Moore and Philyaw for the above-mentioned reasons and the reasons set forth in the Brief.

### Conclusion

In view of the foregoing, reversal of the rejections of the claims is respectfully requested. For any one of the above-stated reasons, the rejections of the respective claims should be reversed. In combination, the above-stated reasons overwhelmingly support such reversal. Accordingly, Appellants respectfully request that the Board reverse the rejections of the claims.

Respectfully submitted,

Date: 12/29/08

Attorney:   
James D. Shaurette  
Reg. No. 39,833